

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 123836-001-SF

University of Michigan Prescription Drug Plan
and
informedRx (Plan manager)
Respondents

Issued and entered
this 10th day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On October 18, 2011, XXXXX, parent and authorized representative of XXXXX(Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on October 18, 2011.

The Petitioner receives prescription drug benefits as a dependent under a self-funded plan sponsored by the University of Michigan for its employees. The plan's prescription drug benefits are managed by informedRx.

The Commissioner notified informedRx of the external review and requested the information used in making its adverse determination. The Commissioner received informedRx's response on October 18, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

In April 2011 the Petitioner was diagnosed with narcolepsy. Her physician initially prescribed the drug Provigil, but it was ineffective as it did not relieve her symptoms of fatigue. Petitioner's physician then prescribed Nuvigil and Petitioner found it to be effective in controlling her symptoms.

informedRx denied coverage for Nuvigil ruling that it is an excluded medication under the terms of the plan. The Petitioner appealed the denial through informRx's internal grievance process. informedRx issued a final adverse determination dated September 23, 2011, affirming its denial.

III. ISSUE

Is informedRx required to provide prescription drug coverage for Nuvigil?

IV. ANALYSIS

Respondents' Argument

Respondents provided the following explanation for the denial of coverage:

Nuvigil is an excluded product on the University of Michigan's formulary. . . . Nuvigil was reviewed by the University of Michigan's Pharmacy Benefits Advisory Committee in 2009 and determined to be an excluded product based on the equivalence to Provigil. Provigil is covered by the University of Michigan with a prior authorization requirement.

Petitioner's Argument

The Petitioner states Nuvigil is not listed as a covered drug on the formulary list, but a similar drug called Provigil is covered by informedRx. Petitioner indicates that she tried Provigil when she was first diagnosed with narcolepsy and it proved to be ineffective because it did not relieve her narcolepsy symptoms. She goes on to state that she tried Nuvigil and has been experiencing positive results because it is controlling her symptoms.

In a letter dated September 7, 2011, Petitioner's physician, Dr. XXXXX, wrote that Nuvigil is medically necessary for treatment of her condition:

[Petitioner] has tried Provigil in the past and reported that it did not work for her and also states she had a side effect from the Provigil. She has tried Nuvigil, and this medication has worked well in controlling the symptoms of her narcolepsy. It is my recommendation that she continue the Nuvigil. As you know, narcolepsy is a chronic neurologic disorder that affects the brain's ability to regulate the sleep-wake cycle, resulting in excessive daytime sleepiness and intermittent bouts of REM sleep during wakefulness. . . .

The effectiveness of NUVIGIL in improving wakefulness in patients with excessive sleepiness (ES) associated with narcolepsy was established in one 12-week, multicenter, placebo-controlled, parallel-group, double-blind study of outpatients who met the ICSD criteria for narcolepsy. . . .

Given the above information, it is clear that [Petitioner] would benefit greatly from Nuvigil and her quality of life would be improved due to her symptoms of narcolepsy being controlled.

Commissioner's Review

The University of Michigan Prescription Drug Plan is maintained online at

<http://benefits.umich.edu/plans/drugs/coverage.html>

and lists a number of exclusions from the list of approved drugs. Among the exclusions is one for “[p]rescription products that offer no additional clinical benefit over existing available therapies or existing therapeutically equivalent products in the drug class.” The University of Michigan’s Pharmacy Benefit Advisory Committee has determined that Nuvigil offers no clinical benefit over Provigil.

Because this plan is self-funded, it is not subject to a provision of the Michigan Insurance Code which requires insurers to provide for exceptions to drug exclusions when approved drugs are not effective. See MCL 500.3406o.

The Commissioner concludes that informedRx correctly applied the provisions of Petitioner’s prescription drug coverage.

V. ORDER

The final adverse determination of September 23, 2011, is upheld. Respondents are not required to provide coverage for Nuvigil for the treatment of Petitioner’s condition.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner